

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TRENTON SILDACK,

Plaintiff,

v.

Case No. 11-12939
Honorable Denise Page Hood

CORIZON HEALTH, INC., et al.,
Defendants.

/

ORDER ACCEPTING REPORT AND RECOMMENDATION
and
ORDER SETTING DATES

This matter is before the Court on Magistrate Judge R. Steven Whalen's Report and Recommendation ("R&R") filed September 4, 2014 [Doc. No. 182] on Defendants Adam Edelman and Sylvia McQueen's Motion for Leave to File a Second Motion for Summary Judgment and Renewed Motion for Summary Judgment. The R&R also addressed Defendant Jeffrey C. Stieve's Motion to Dismiss and for Summary Judgment. Edelman and McQueen filed Objections on September 16, 2014 and Stieve filed his Objections on September 15, 2014.

The standard of review by the district court when examining an R&R is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which

an objection is made.” 28 U.S.C. § 636(b)(1). The Court “may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* In order to preserve the right to appeal the Magistrate Judge’s recommendation, a party must file objections to the R&R within fourteen (14) days of service. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

After review of the Magistrate Judge’s R&R, the parties’ briefs and Defendants’ Objections, the Court finds that his findings and conclusions are correct. As to Defendants Edelman and McQueen, the Court agrees with the Magistrate Judge that the evidence submitted which was not available in their initial summary judgment motion, does not provide a basis to revisit the September 30, 2013 denial of summary judgment. Defendants Edelman and McQueen’s Objections that the Magistrate Judge made credibility findings and failed to consider other evidence are without merit.

Regarding Defendant Stieve, the Court agrees with the Magistrate Judge that the issue there remains an issue of material fact as to his involvement. Defendant Stieve’s Objections that the Magistrate Judge failed to give due consideration to Defendants Edelman and McQueen’s renewed summary judgment and that the

Magistrate Judge improperly substituted his personal judgment regarding the medical care Plaintiff received from the remaining Defendants are without merit.

The Court also agrees with the Magistrate Judge that venue was proper in this district pursuant to 28 U.S.C. §§ 1381(b), 1406(1) when the action was first filed because some of the Defendants resided in this district or that a portion of the events alleged occurred in this district. As to Defendant Stieve's motion to transfer venue under 28 U.S.C. § 1404(a), the Court agrees with the Magistrate Judge's findings as to the factors to be considered, and that based on trial efficiency and the totality of the circumstances factors, venue will not be transferred to the Western District of Michigan. The Magistrate Judge noted this matter is ready for trial. A defendant who seeks a change of venue must act with reasonable promptness and if the defendant delays shortly before trial, the interest of justice in early trials overcomes any convenience to the parties which might result from a change of venue. *Nagle v. Pennsylvania R. Co.*, 89 F. Supp. 822, 823 (N.D. Ohio 1950). Defendant Stieve's Objection to the Magistrate Judge's recommendation as to venue is overruled.

For the reasons set forth above,

IT IS ORDERED that the Magistrate Judge's Report and Recommendation [Doc. No. 182] is ACCEPTED and ADOPTED as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Defendants Adam Edelman and Sylvia McQueen's Motion for Leave to File a Second Motion for Summary Judgment [**Doc. No. 170**] is DENIED.

IT IS FURTHER ORDERED that Defendants Adam Edelman and Sylvia McQueen's Renewed Motion for Summary Judgment [**Doc. No. 173**] is DENIED.

IT IS FURTHER ORDERED that Defendant Jeffrey C. Stieve's Motion to Dismiss (Or Alternatively to Change Venue) and for Summary Judgment [**Doc. No. 174**] is DENIED.

IT IS FURTHER ORDERED that Defendants' Objections [**Doc. Nos. 184 and 185**] are OVERRULED.

IT IS FURTHER ORDERED that a Final Pretrial Conference is set for **Monday, November 17, 2014, 2:00 p.m.** All parties with authority to settle must appear at the conference. The Joint Proposed Final Pretrial Order in the format set forth in E.D. Mich. LR 16.2 must be submitted to chambers by November 10, 2014. Any trial motions in limine must be filed by November 10, 2014. The Trial is set for **Tuesday, December 9, 2014, 9:00 a.m.**

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: September 30, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 30, 2014, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager